

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Pelham School District

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:48 I/II illegal deductions
Interest

Employer: Pelham School District, 59A Marsh Rd, Pelham, NH 03051

Date of Hearing: September 29, 2015

Case No.: 50729

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$43,424.00 in unpaid wages for wages lost because she was unable to continue in her job.

At the hearing, she clarified that she was also due an additional \$6,701.22 that the employer deducted from her final balloon payment for sick days she had not earned.

The employer filed a Motion to Dismiss. The Department respectfully denied their request.

The employer argues the claimant cannot seek lost wages not earned, through this Department. They also argue the claimant received payment for all of the days she worked.

The employer also argued the claimant is barred by res judicata from bringing this claim forward as it is similar to a claim she filed in 2013.

FINDINGS OF FACT

The claimant is not barred by the doctrine of res judicata for this claim. The claimant filed a claim on July 19, 2013, for a similar claim of sick pay. The claimant did not request a hearing in this case and the Department did not hold a hearing for this matter. Pursuant to University of N.H. v. April 115 N.H. 576 (1975), a judgment on the merits is conclusive upon the parties "both as to what was actually litigated and as to her everything that might have been litigated", and that the current Wage Claim involves the same "cause of action", arising out of the same factual transaction, thereby extinguishing the claimant's rights to remedies.

As no hearing has been held and no judgment has been issued on these matters, the claimant is not barred from requesting a hearing on similar matters and/or additional issues.

The claimant worked for the employer from 2010 through May 20, 2013, though the employer placed the claimant on FMLA on May 20, 2013 through the end of the contract year of June 30, 2013.

The claimant resigned her position on May 20, 2013, due to what she described as post-traumatic stress disorder (PTSD) due to a hostile work environment and a work related injury suffered in December 2011.

She applied for disability through a third party insurance carrier and received approval for benefits on August 26, 2013. She has been receiving disability insurance benefit payments since the expiration of the ninety day waiting period which began on April 1, 2013.

The claimant seeks the difference between her regular annual salary with the school and the amounts she has received in disability insurance benefit payments, or \$32,864.00.

She also seeks \$10,560 in lost wages because she is not able to teach additional summer school sessions.

RSA 275:51 V allows an employee to file a claim for wages with this Department.

RSA 275:42 III defines wages as compensation, including hourly health and welfare, and pension fund contributions required pursuant to a health and welfare trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of an employee and agreed to by his employer, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

The difference between the claimant's previous salary and her disability benefit insurance payments is not defined as wages. The claimant's inability to earn wages is also not defined as wages. There is simply no statutory authority to award these payments through this Department.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed wages.

The claimant argues that she should have been paid for all the sick time between May 20, 2013 and the end of the contract year because she was found to be disabled as of April 1, 2013, by the disability insurance carrier. She further argues that the employer should not have deducted these sick days from her year-end balloon check.

The claimant, in an agreement with the employer, agreed to a twenty-six week payment schedule, with a balloon payment at the end of the school year. As part of the agreement, the claimant agreed to defer a portion of her regular bi-weekly salary in order to fund the year end balloon payment.

The parties contracted for one hundred eighty-six work days for the school year with an annual salary of \$48,860 based on the 12M step in the PEA contract for 2011-2013.

The claimant's daily rate for one hundred eighty-six days, with an annual salary of \$48,860, is \$262.69. The claimant worked, or had benefit time for, 160.49 days. She quit her position on May 20, 2013, and therefore, was not entitled to pay for the remaining 25.51 days of the school contract year.

The employer paid the claimant \$37,847.29 in regular biweekly wages for days worked and accrued benefit time. She received a balloon check in the amount of \$4,311.49 at the end of the school year. In total, she received \$42,158.78 for 160.49 days. The employer did not pay her for the 25.51 days, valued at \$6,701.22, left in the school term after her resignation.

The claimant is not entitled to the \$6,701.22 as she did not work or have benefit time to cover those days. The employer did not make any deductions from her year-end balloon check. She simply did not work the time to make the deferred payments towards the year end balloon check.

The claimant's argument that she suffered a work related injury for which she was considered disabled by a third party disability insurance carrier and therefore should be paid for all of her sick days, is not persuasive. The claimant resigned her position effective May 20, 2013. She is not due any compensation for dates after her resignation. The wage claim process is not the correct forum to discuss a Workers Compensation Injury claim.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that the employer made illegal deductions from her year-end balloon check.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet her burden in this claim.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:48 I allows an employer make deductions from wages due an employee with proper authorization, and as this Department finds that the claimant failed to prove the employer illegally made deductions from her wages for sick days not earned, it is hereby ruled that this portion of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 21, 2015

MJD/kdc